

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

May 23, 2008

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

HAWAII

Consent to Mortgage of Sublease K-4 with Estoppel Certificate and Subordination Agreement, General Lease No. S-5619, Natural Energy Laboratory of Hawai'i Authority (NELHA), Lessee, Cyanotech Corporation, Sublessee/ Mortgagor, Kalaoa 1<sup>st</sup>-4<sup>th</sup>, North Kona, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 7-3-43, portion of 42

APPLICANT AND REQUEST:

Cyanotech Corporation, requesting Consent to Mortgage of Sublease K-4 with Estoppel Certificate from Bridgeview Capital Solutions, Mortgagee, in an amount not to exceed \$ 1,078,400.00, in exactly the form attached.

Subordination of the first position lien interest of NELHA and the State of Hawai'i to Bridgeview Capital Solutions, Mortgagee.

LEGAL REFERENCE:

Section 171-22, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Keahole, North Kona, Hawai'i, identified by Tax Map Key: 3<sup>rd</sup>/ 7-3-43: 03 & 42, consisting of approximately 321.8 acres, as shown on the attached map labelled Exhibit A.

SUBLEASE AREA:

NELHA's Sublease K-4, identified by Tax Map Key: 3<sup>rd</sup>/ 7-3-43: 63, previously Tax Map Key: 3<sup>rd</sup>/ 7-3-43: portion 42, consisting of 90.067 acres. (Exhibit A)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

SUBLEASE USE:

The commercial production of various microalgal products including, but not limited to, *spirulina*, natural beta-carotene, astaxanthin, natural biopesticides and Chlorella.

TERM OF LEASE:

65 years, commencing on November 1, 1978 and expiring on October 31, 2043. First rental reopening is scheduled for November 2, 2013.

TERM OF SUBLEASE:

30 years, commencing on January 1, 1996

ANNUAL RENTAL:

\$1.00 per annum from November 1, 1978 and expiring on December 31, 2013.

SUBLEASE RENTAL:

\$9,360.00 per month or 2% of gross sales, whichever is greater. Gross sales being defined as all receipts, income and revenues derived from or relating to, or connected with the operations on the rental property excluding: 1) costs for goods shipped to a foreign destination from the State of Hawai'i; 2) import tariffs; 3) brokerage commission for foreign sales; and 4) State of Hawai'i general excise tax. Subject to staff appraiser's review.

USE OF LOAN PROCEEDS:

An itemized breakdown of how the loan proceeds will be disbursed are as follows:

\$1,000,000.00	Working Capital
<u>78,400.00</u>	Loan Fees
\$1,078,400.00	Principal balance of proposed Mortgage

REMARKS:

At its meeting of April 26, 1996, the Board of Land and Natural Resources, under Agenda Item D-14, approved the Cancellation of Sublease K-2 and Facilities Use Agreement and Consent to Sublease K-4 of General Lease No. S-4717, NELHA, Sublessor, to Cyanotech Corporation, a Nevada corporation, as Sublessee. Sublease to commence on January 1, 1996 and expire on December 31, 2026, for a term of thirty (30) years.

At its meeting of November 19, 1999, the Board of Land and Natural Resources, under Agenda Item D-20, approved as amended, the cancellation of General Lease No. S-4717 and S-5157; Cancellation of Governor's Executive Order No. 3282; and Direct Issuance of a New Lease (GLS-5619) to the NELHA.

On April 18, 2000, the Chairperson of the Board of Land and Natural Resources approved the Consent to Mortgage of Sublease K-4 and Estoppel Certificate in favor of B & I Lending. Loan proceeds with an aggregate principal amount of Three Million Five Hundred Thousand and 00/100 Dollars (\$3,500,000.00) was under the United States Department of Agriculture, Rural Development guaranteed loan program. Mortgage loan proceeds were disbursed to consolidate Cyanotech's existing debts (\$1,697,000), for working capital (\$1,643,000), and the balance (\$160,000) for the usual fees associated with mortgage closings. The Land Board also approved a Subordination Agreement relating to the above. Both documents were recorded with the Bureau of Conveyances on April 21, 2000.

By letter dated February 7, 2008, Ms. Laurence Sombardier, Revenue Specialist, NELHA, on behalf of Cyanotech Corporation, requested consent to mortgage of Sublease K-4, General Lease No. S-5619, NELHA, Lessee, Cyanotech Corporation, Sublessee/Mortgagor, in favor of Bridgeview Capital Solutions, as Mortgagee.

Cyanotech Corporation has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Staff reviewed the file and can report that for the past two (2) years, Lessee has been in compliance with all lease terms and conditions. The Lessee has never been cited for any illegal or unlawful activity on the State property.

The first rental reopening is scheduled for November 11, 2013.

Staff's comments and recommendations to the instant request are as follows:

- Staff has no objections to the Consent to Mortgage and recommends approval.
- The Estoppel Certificate is merely a certification by the Board/Department that NELHA is compliant and current on its Master Lease with the Department; and it does not involve any certification as to whether Cyanotech is compliant and current with its NELHA's Sublease. Therefore, Staff has no objections to the Estoppel Certificate and recommends approval.
- The Subordination Agreement relates to only Cyanotech's personal property and does not involve any interest in real property, and does not involve the Department's fee or leased fee interest. Staff recommends approval of the Subordination Agreement as aforesaid.<sup>1</sup>

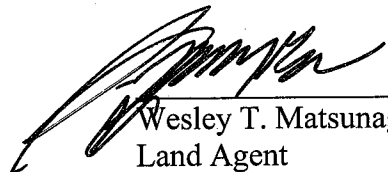
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<sup>1</sup> The lender for Cyanotech also initially requested within the Subordination Agreement that: (1) DLNR notify it of any Notices of Default; (2) agreement not to terminate the Master Lease with NELHA without giving Cyanotech's Lender a certain time period to cure NELHA's default, and step into the shoes of NELHA as the new Lessee. For

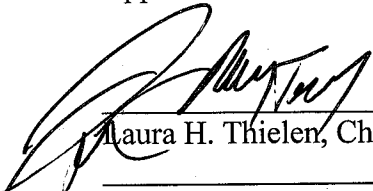
RECOMMENDATION: That the Board:

- A. Consent to the Mortgage of Sublease K-4 of General Lease No. S-5619, NELHA, Lessee, between Cyanotech Corporation, Sublessee/Mortgagor, and Bridgeview Capital Solutions, Mortgagee, subject to Staff's comments and recommendations noted above, and subject to the following:
1. The loan proceeds shall be used for the purposes as stated in "Use of Loan Proceeds" above. The Lessee shall maintain records of loan expenditures, which may be inspected by the Department;
  2. The standard terms and conditions of the most current consent to mortgage form, as may be amended from time to time;
  3. Review and approval by the Department of the Attorney General; and
  4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- B. Authorize the execution of an Estoppel Certificate and Subordination Agreement subject to Staff's comments and recommendations noted above, and subject to the following:
1. Review and approval by the Department of the Attorney General; and
  2. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.

Respectfully Submitted,

  
Wesley T. Matsunaga  
Land Agent

Approve for submittal:

  
Laura H. Thielen, Chairperson

various reasons, Staff does not agree with these additional conditions and has so informed the lawyers for Cyanotech on the transaction. As stated above, Staff is only recommending the approval of the subordination agreement as it relates to the Department's landlord lien rights, if any, and Cyanotech's personal property, and not subordinating any interest in real property.

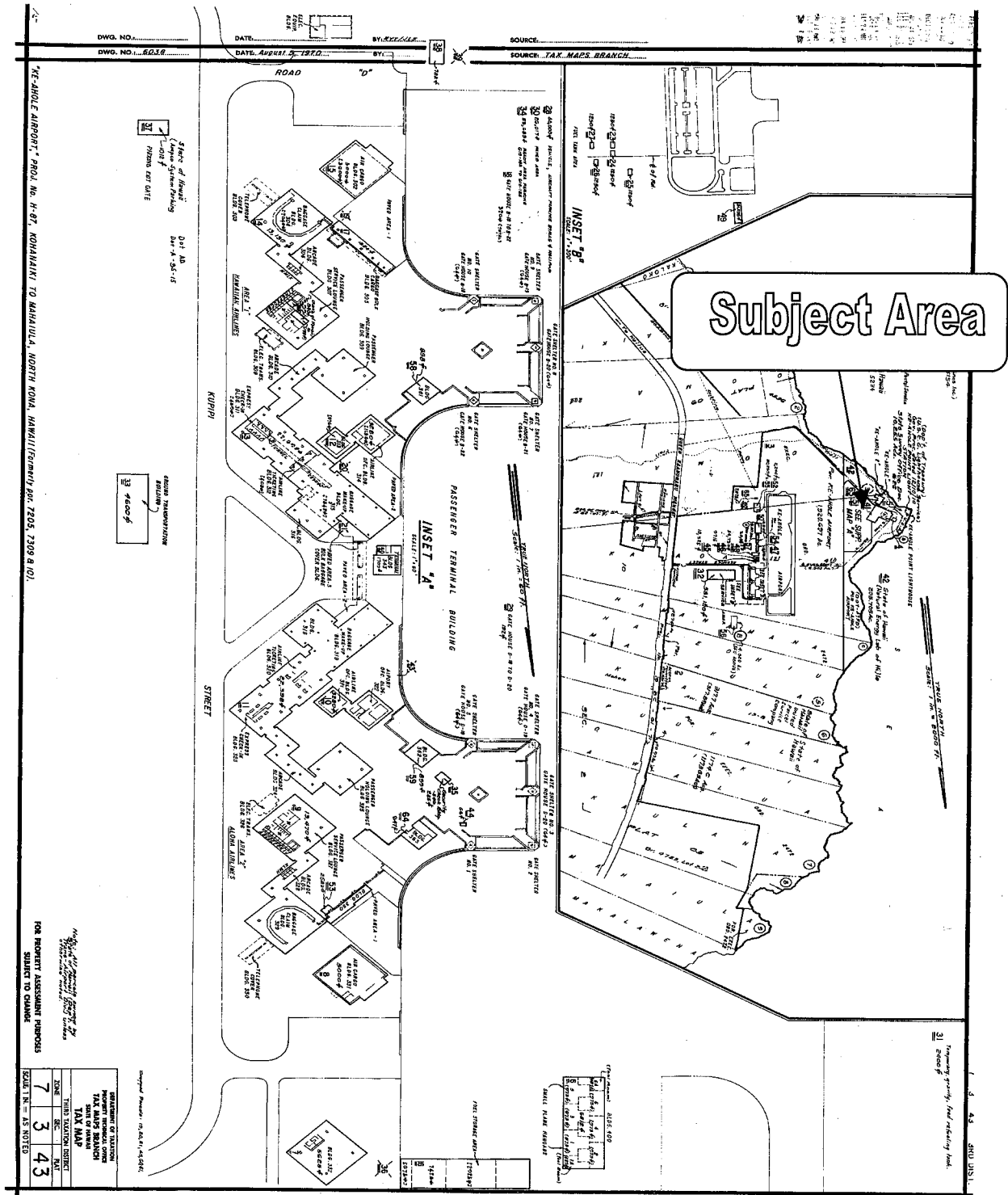


EXHIBIT A

Return by Mail( )Pickup( )  
YAMAMOTO & SETTLE  
A Limited Liability Law Company  
700 Bishop Street, Suite 200  
Honolulu, Hawaii 96813  
Attn: Dean T. Yamamoto

To:

Total No. of Pages: \_\_\_\_\_

Tax Map Key No. (3) 7-3-043-063

REAL PROPERTY MORTGAGE; SECURITY AGREEMENT;  
ASSIGNMENT OF RENTS; AND FINANCING STATEMENT

THIS REAL PROPERTY MORTGAGE; SECURITY AGREEMENT; ASSIGNMENT OF RENTS; AND FINANCING STATEMENT (this "Mortgage") is made on \_\_\_\_\_, 2008, by CYANOTECH CORPORATION, a Nevada corporation, with its principal place of business and post office address at 73-4460 Queen Kaahumanu Highway, Suite 102, Kailua-Kona, Hawaii 96740, hereinafter called the "Mortgagor," to BRIDGEVIEW CAPITAL SOLUTIONS, L.L.C., a Delaware limited liability company, with its principal place of business and post office address at 5881 Glenridge Drive, Suite 130, Atlanta, Georgia 30328, hereinafter called the "Mortgagee,"

WITNESSETH THAT:

To secure the repayment of that certain loan (the "Loan") made by the Mortgagee to the Mortgagor in the aggregate principal amount of ONE MILLION SEVENTY-EIGHT THOUSAND FOUR HUNDRED AND 00/100 DOLLARS (\$1,078,400.00), and all renewals, extensions and modifications thereof, together with interest thereon in accordance with those certain promissory notes executed concurrently herewith by the Mortgagor, as maker, and made payable to the order of the Mortgagee, the provisions of such note and any renewals, extensions or modifications thereof being incorporated herein by reference, being secured hereby and being hereinafter referred to collectively as the "Note";

AND ALSO to secure the observance and performance of all obligations of the United States Department of Agriculture, Rural Development ("Rural Development"), under that certain Conditional Commitment (the "Conditional Commitment") issued by Rural Development dated

\_\_\_\_\_, and the Loan Note Guarantee issued pursuant thereto by Rural Development in favor of Mortgagee (the "Loan Note Guarantee"), and any amendments thereto;

AND ALSO to secure the observance and performance by the Mortgagor of all covenants, conditions and agreements required to be observed and performed by the Mortgagor under this Mortgage, that certain Term Loan Agreement executed substantially concurrently herewith (the "Loan Agreement"), that certain security agreement (the "Security Agreement") executed substantially concurrently herewith by the Mortgagor and the Mortgagee, and under any other instruments or agreements executed by the Mortgagor concurrently herewith or otherwise in connection with the Loan, including, but not limited to, the payment by the Mortgagor to the Mortgagee of all sums expended or advanced by the Mortgagee pursuant to any provision of this Mortgage or any such other instrument or agreement (the Note, this Mortgage, the Loan Agreement, that certain Commitment Letter dated January 23, 2008, executed by the Mortgagee and accepted by the Mortgagor, the Security Agreement, the Conditional Commitment, the Loan Note Guarantee, and all other instruments and agreements executed in connection with the Loan being hereinafter called the "Loan Documents");

AND ALSO to secure the payment by the Mortgagor to the Mortgagee of all other sums now or hereafter loaned or advanced by the Mortgagee to the Mortgagor, expended by the Mortgagee for the account of the Mortgagor, or otherwise owing by the Mortgagor to the Mortgagee on any and every account whatsoever;

THE MORTGAGOR DOES HEREBY grant, bargain, sell, assign and convey unto the Mortgagee, its successors and assigns, all of that certain lease (the "Lease") described in Exhibit A attached hereto and made a part hereof, together with the estate created thereby, subject to the encumbrances (the "Encumbrances"), if any, set forth in such Exhibit.

TOGETHER WITH all buildings and improvements now located on the demised premises (the "Premises") and all buildings, improvements and building materials that may be hereafter placed thereon during the existence of this Mortgage and all rents, royalties, profits, revenues, income and other benefits arising from the use or enjoyment of all or any portion of the above-described property or any contract pertaining to the use or enjoyment thereof;

ALSO TOGETHER with all furniture, furnishings, machinery, appliances, apparatus, equipment, inventory, fittings, fixtures and articles of personal property of every kind and nature whatsoever, other than consumable goods, now or hereafter located in or upon the Premises or any part thereof or wherever located (hereinafter called "Equipment") and now owned or hereafter acquired by the Mortgagor, including all of the proceeds deriving therefrom and all of the right, title and interest of the Mortgagor, in and to any Equipment which may be subject to any retail installment contract, conditional sale contract or security agreement superior in lien and security interest to the lien and security interest of this Mortgage, it being understood and agreed that all of the Equipment is part and parcel of the improvements on such premises and appropriated to the use thereof and whether affixed or annexed or not, shall for the purpose of this Mortgage be deemed conclusively to be conveyed hereby, the Mortgagor agreeing to execute and deliver, from time to time, such further instruments as may be requested by the Mortgagee to confirm the lien and security interest of this Mortgage on the Equipment;

ALSO TOGETHER with any and all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the Premises and improvements as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade of any street, or (c) any other injury to or decrease in the value of the Premises and improvements, to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment by the Mortgagee, and of the reasonable counsel fees, costs and disbursements incurred by the Mortgagee in connection with the collection of such award or payment, the Mortgagor agreeing to execute and deliver, from time to time, such further instruments as may be required by the Mortgagee to confirm such assignment to the Mortgagee of any such award or payment;

ALSO TOGETHER with all right, title and interest of the Mortgagor in and to (1) all leases, partial assignments, subleases and other contracts of conveyance covering all or any portion of such real property or the Equipment, and any and all modifications and extensions thereof; (2) all binders or policies of insurance of any kind covering all or any portion of such real property or the Equipment, and any riders, amendments, extensions, renewals, supplements or revisions thereof; (3) any and all accounts (as defined in the Uniform Commercial Code as adopted in the State of Hawaii under Chapter 490, Hawaii Revised Statutes, as amended, hereinafter referred to as the "UCC") which may in any way pertain to the business of the Mortgagor; and (4) any and all general intangibles (as defined in the UCC) including contracts, permits, licenses, certificates, authorizations, refunds, rebates, security deposits, trademarks and tradenames, which may in any way pertain to the business of the Mortgagor (the items of collateral described in this paragraph being hereinafter called the "Collateral");

ALSO TOGETHER with all of the estate, right, title and interest of the Mortgagor, both at law and in equity, therein and thereto, and in and to any deposit of cash, securities or other property which may be held at any time and from time to time by the lessor under the Lease to secure the performance by the Mortgagor of the covenants, conditions and agreements to be performed by the Mortgagor thereunder, and any option to purchase the fee simple title to the Premises, or any greater interest therein than the Mortgagor now owns; and any and all other, further or additional title, estate, interest or right which may at any time be acquired by the Mortgagor in or to the Premises, the Mortgagor hereby agreeing that if the Mortgagor shall, at any time prior to payment in full of all indebtedness secured hereby, acquire the fee simple title or any other or greater estate than the Mortgagor now owns in the Premises, then, and in that event, the lien of this Mortgage shall attach, extend to, cover and be a lien upon such fee simple title or other greater estate, and that the Mortgagor will execute, acknowledge and deliver such instruments as the Mortgagee may reasonably require to accomplish such result;

ALSO TOGETHER with all rights of the Mortgagor and the Mortgagor's bankruptcy trustee to deal with the Lease, which rights may arise as a result of the commencement of a proceeding under the federal bankruptcy laws by or against (i) the Mortgagor or (ii) the lessor under the Lease, including, without limitation, the right to assume or reject, or compel the assumption or rejection of the Lease pursuant to 11 U.S.C. § 365(a) or any successor law, the right to seek and obtain extensions of time to assume or reject the Lease, and the right to elect whether to treat the Lease as terminated by the lessor's rejection of the Lease or to remain in possession of the Mortgaged Property and offset damages pursuant to 11 U.S.C. § 365(h)(1) or any successor law;



TO HAVE AND TO HOLD all of the above-described property, Equipment, Collateral, awards, payments and other property together with all rights, privileges and appurtenances thereto belonging (all of such property being hereinafter referred to as the "Mortgaged Property") unto the Mortgagee, for the unexpired term or extended term of the Lease (or if the Mortgagor shall acquire fee simple title, then, forever); SUBJECT, HOWEVER, to the Encumbrances, if any;

UPON CONDITION that if the Mortgagor shall well and truly pay to the Mortgagee the principal amount of the Note, with interest, fees, charges and premium, if any, according to its provisions and effect, and if the Mortgagor shall discharge any and all obligations that now or hereafter may be or become owing, directly or contingently, by the Mortgagor to the Mortgagee on any and every account, whether or not the same are mature, of which obligations the books of the Mortgagee shall be prima facie evidence, and if the Mortgagor shall observe and perform all of the covenants, conditions and agreements to be observed and performed by the Mortgagor under this Mortgage and under the other Loan Documents, and if the Mortgagor shall pay the costs of release, then these presents shall be void, and that, subject to the terms hereof, until the happening of an Event of Default (as hereinafter defined), the Mortgagor shall be permitted to use and possess the Mortgaged Property and to use and receive the rents, issues, profits, revenues and other income thereof;

BUT, if any one or more of the following events ("Events of Default") shall occur:

(a) Default shall be made by the Mortgagor in the payment of principal, interest, fees or charges when due on the Note or any other obligation secured hereby, and the same is not cured within ten (10) days of the occurrence of the default; or

(b) Default shall be made by the Mortgagor in the due and punctual observance or performance of any other covenant, agreement, obligation or condition required to be observed or performed by the Mortgagor under this Mortgage or the Note or any of the other Loan Documents in a material manner, and such default shall not have been remedied within thirty (30) days after the occurrence of the default; or

(c) The Mortgagor shall become insolvent or shall be voluntarily or involuntarily dissolved or shall admit in writing the Mortgagor's inability to meet the Mortgagor's debts as they become due, or the Mortgagor shall file a voluntary petition in bankruptcy, or make an assignment for the benefit of creditors, or consent to the appointment of a receiver or trustee for all or a substantial part of the Mortgagor's properties, or file a petition, answer or other instrument seeking or acquiescing to the arrangement of the Mortgagor's debts, or other relief under the federal bankruptcy laws or any other applicable law for the relief of debtors of the United States of America or any state or territory thereof; or

(d) A decree or order of a court having jurisdiction in the Premises shall be entered (i) adjudging the Mortgagor to be bankrupt or insolvent, or (ii) appointing a receiver or trustee or assignee in bankruptcy or insolvency of the Mortgagor or the Mortgagor's properties, or (iii) directing the winding up or liquidation of the Mortgagor's affairs; or

(e) Any representation or warranty made by the Mortgagor herein or otherwise in connection with the Loan shall be untrue in any material respect; or

(f) An Event of Default, as defined in the Loan Agreement or any of the other Loan Documents, shall occur; or

(g) The Loan Note Guarantee shall be voided, repudiated, or breached;

THEN, AND IN ANY SUCH EVENT:

(A) The Mortgagee may, without notice, presentment or demand, declare the unpaid principal amount of the Note and any interest thereon accrued and unpaid to be immediately due and payable, and such principal amount and interest shall thereupon become and be immediately due and payable, and shall thereafter bear interest until fully paid at the rate specified in the Note to be paid in the event of a default;

(B) The Mortgagor, upon demand of the Mortgagee, shall forthwith surrender to the Mortgagee the actual possession of the Mortgaged Property and, to the extent permitted by law, the Mortgagee itself or such officers or agents as it may appoint: (i) may enter and take possession of the Mortgaged Property, together with the books, papers and accounts of the Mortgagor relating thereto; (ii) may exclude the Mortgagor, and the Mortgagor's agents and servants therefrom; (iii) may hold, operate and manage the same and from time to time make all needful repairs and such alterations, additions, advances and improvements as the Mortgagee shall deem appropriate; and (iv) may receive tolls, rents, revenues, issues, income, product and profits thereof and out of the same may pay all proper costs and expenses of so taking, holding and managing the same, including reasonable compensation to the Mortgagee's agents, attorneys and counsel, and any taxes and assessments and other charges prior to the lien and security interest of this Mortgage, which the Mortgagee shall deem necessary or desirable to pay, and all expenses of such repairs, alterations, additions and improvements, and other disbursements made by the Mortgagee pursuant to the terms hereof, and may apply the remainder of the monies so received by the Mortgagee to the payment of any sums secured hereby, including, but not limited to, the unpaid principal of, and interest on, the Note;

(C) The Mortgagee may, to the extent permitted by law, with or without first taking possession, sell the Mortgaged Property, in whole or, to the extent permitted by law, in part, at public auction in the State of Hawaii, or at such place as may be required by law, having first given notice of such sale by publication as may be required by law, and may adjourn such sale from time to time by announcement at the time and place appointed for such sale or adjourned sale, and upon such sale, the Mortgagee may make and deliver to any purchaser a good and sufficient assignment, conveyance, or bill of sale, and good and sufficient receipts for the purchase money, and do and perform all other acts as may be necessary fully to carry into effect this power of sale;

(D) The Mortgagee may, either with or without first taking possession, proceed by action or actions at law or in equity, or by any other appropriate remedy, to enforce payment of the Note or performance of any other obligation secured hereby, and to foreclose this Mortgage, and to sell, in whole, or to the extent permitted by law, in part, the Mortgaged Property under the judgment or decree of a court or courts of competent jurisdiction;

(E) Upon the institution of judicial proceedings to enforce its rights hereunder, the Mortgagee, to the extent permitted by law, shall be entitled as a matter of right to the ex parte

appointment (without bond) of a receiver or receivers of the Mortgaged Property and of the tolls, rents, revenues, issues, income, product and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer; and

(F) The Mortgagee shall have the right to enforce one or more remedies hereunder, or any other remedy the Mortgagee may have under the other Loan Documents, successively or concurrently, including, but not limited to, the right to foreclose this Mortgage with respect to any portion of the Mortgaged Property, if the operation of the remaining portion thereof is not thereby rendered unlawful under the then applicable laws, rules and regulations of the governmental authorities having jurisdiction in the premises, without thereby impairing the lien of this Mortgage on the remainder of the Mortgaged Property or affecting the remedies of the Mortgagee available with respect thereto.

Upon any sale, either under the power of sale hereby given or under judgment or decree in any judicial proceedings for foreclosure, or otherwise for enforcement of this Mortgage, the unpaid principal amount of the Note, the unpaid interest thereon, and all other obligations hereby secured, if not previously due, shall at once become and be immediately due and payable.

Upon any such sale, the Mortgagee may bid for and purchase the Mortgaged Property or any part thereof, and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its absolute right without further accountability, and the Mortgagee, at any such sale may, if permitted by law, after allowing for the proportion of the total purchase price required to be paid in cash for the costs and expenses of the sale, commissioner's compensation and other charges, in paying purchase money, turn in the Note, including interest thereon, in lieu of cash, up to the amount which shall, upon distribution of net proceeds of such sale, be payable thereon. The Mortgagee shall be permitted to bid at any public auction held to sell the Mortgaged Property without payment of a deposit or down payment of any kind. The Mortgagee shall not be required at confirmation of any public auction sale to extend credit or financing of any kind to the Mortgagor or any other party that may acquire the Mortgaged Property.

The Mortgagee may apply the proceeds of any such sale, first, to the costs and expenses of such sale and all proceedings in connection therewith, including, but not limited to, counsel fees; next, to the payment of any unreimbursed disbursements made by the Mortgagee for taxes or assessments, rents or other payments under the Lease, or other charges prior to the lien of this Mortgage; next, to the payment of all other unreimbursed disbursements and expenses and unpaid charges and fees due and owing to the Mortgagee under the provisions of this Mortgage or any of the other Loan Documents; and next, to the payment of the unpaid principal sum of and interest on the Note and all other obligations of the Mortgagor to the Mortgagee in such order as the Mortgagee shall determine; and the remainder, if any, shall be paid over to the Mortgagor. If such proceeds shall be insufficient to discharge the entire indebtedness under the Loan Documents, the Mortgagee may have any other legal recourse against the Mortgagor for the deficiency.

Any such sale shall, to the extent permitted by law, be a perpetual bar, both at law and in equity, against the Mortgagor and all persons and corporations lawfully claiming by or through or under the Mortgagor; and the Mortgagee is hereby irrevocably appointed the true and lawful attorney of the Mortgagor, in the Mortgagor's name and stead, for the purpose of effectuating any such sale, to execute and deliver all necessary deeds, conveyances, assignments, bills of sale and

other instruments with power to substitute one or more persons or corporations with like power; provided, that the Mortgagor shall ratify and confirm any such sale or transfer if required by the Mortgagee by delivering all proper conveyances or other instruments to such persons or corporations as may be designated in any such request.

In case of any Event of Default, neither the Mortgagor nor anyone claiming by, through or under the Mortgagor, to the extent the Mortgagor may lawfully so agree, shall or will set up, claim or seek to take advantage of any appraisalment, valuation, stay, extension or redemption laws now or hereafter in force in any locality where any of the Mortgaged Property is situated, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof; and the Mortgagor, for the Mortgagor and all who may claim under the Mortgagor, hereby waives, to the full extent that the Mortgagor may lawfully so do, the benefit of all such laws, and any and all right to have the estate comprised in the security intended to be created hereby marshalled upon any foreclosure of the lien hereof, and agrees that the Mortgagee or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property as an entirety.

In case the Mortgagee shall have proceeded to enforce any right hereunder and such proceedings shall have been discontinued or abandoned for any reason, then in every such case, the Mortgagor and the Mortgagee shall be restored to their former positions and rights hereunder with respect to the Mortgaged Property, and all rights, remedies and powers of the Mortgagee shall continue as if no such proceedings had been taken. No remedy herein reserved to the Mortgagee is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity, or by statute.

Nothing in this Mortgage, the Note or any of the other Loan Documents shall affect or impair the right, which is unconditional and absolute, of the holder of the Note to enforce payment of the principal of, and interest and other charges on, the Note at or after the date therein expressed as the date when the same shall become due, or the obligation of the Mortgagor, which is likewise unconditional and absolute, to pay such amounts at the respective times and places therein expressed.

#### A. MORTGAGOR'S WARRANTIES.

(a) The Mortgagor hereby warrants and represents that: (1) the Mortgagor is the lawful owner of the Mortgaged Property and has good right to assign the same as aforesaid; (2) the rentals now accrued and due under the Lease are fully paid and the Lease is on the date hereof in all respects in good standing under the terms thereof and valid and in full force and effect; (3) the Mortgaged Property is free and clear from all encumbrances and liens, except for the Encumbrances, if any; (4) the Mortgagor shall WARRANT AND DEFEND such property unto the Mortgagee forever against the lawful claims and demands of all persons whomsoever, except for the Encumbrances; if any; and (5) that the Mortgaged Property is free in all material respects of any flammable explosives, radioactive materials, asbestos, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, including, without limitation,

any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" (collectively, "Hazardous Materials") under any federal, state or local laws, ordinances or regulations, now or hereafter in effect, relating to environmental conditions, industrial hygiene or Hazardous Materials on, under or about the Mortgaged Property, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Clean Air Act, 42 U.S.C. Section 7401, et seq., the Toxic Substances Control Act, 15 U.S.C. Sections 2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. Sections 300f through 300j, and any similar state and local laws and ordinances and the regulations now or hereafter adopted, published and/or promulgated pursuant thereto (collectively, the "Hazardous Materials Laws"); and (5) to the best knowledge of the Mortgagor, no material portion of the Mortgaged Property and no other assets of the Mortgagor are now or may with the passage of time become subject to forfeiture under any federal, state or other law for which forfeiture of assets is a potential penalty or liability. The Mortgaged Property is not currently used in a manner, and no prior use (by Mortgagor, prior owners or any tenant) has occurred, which violates any Hazardous Materials Laws. Neither the Mortgagor nor any tenant has received any notice from a governmental agency for violation of Hazardous Materials Laws.

(b) The Mortgagor further warrants and represents that: (1) the Mortgagor is the lawful and absolute owner of the Equipment and has good right to transfer the same as security under this Mortgage, subject to the Encumbrances, if any; (2) the Equipment is free and clear of all defects of title, security interests, liens and encumbrances, except for the Encumbrances, if any; and (3) the Mortgagor will WARRANT AND DEFEND the same against the claims and demands of all persons, whomsoever, except for the Encumbrances, if any.

**B. MORTGAGOR'S COVENANTS.** The Mortgagor hereby covenants and agrees with the Mortgagee as follows:

1. **Payment of Secured Obligations.** The Mortgagor will pay to the holder of the Note the principal and interest due thereunder, and all fees, charges and other sums payable under the Loan Documents, all according to the provisions thereof, and the Mortgagor will also pay and discharge any and all obligations that are now or hereafter may be or become owing by the Mortgagor to the Mortgagee under the Loan Documents and on any and every other account, together with interest, fees, charges and other sums payable thereon as may be specified with respect thereto.

2. **Payment of Real Property Taxes; Assessments, etc.** The Mortgagor will punctually pay and discharge, or cause to be paid and discharged, from time to time as the same shall become due, all real property taxes, rates, assessments, impositions, duties, water rates, sewer rates and other charges of every description to which the Mortgaged Property, or any part thereof, or any improvements thereon, may during the term of this Mortgage become liable by authority of law, the payment of which shall be secured by this Mortgage; PROVIDED, HOWEVER, that real property taxes may be paid in semiannual installments and improvement or betterment assessments may be paid in annual installments, upon condition that, in each case, the same are not allowed to become delinquent, and that the Mortgagor will, upon request, deposit a copy of the receipts therefor with

the Mortgagee not later than the final date such taxes, assessments and charges may be paid without penalty.

3. **Observance of Laws.** The Mortgagor will duly observe and conform to all laws, rules and regulations made by any governmental authority, and all valid requirements of any regulatory body which may acquire jurisdiction, which apply or relate to any of the Mortgaged Property, including, but not limited to, the construction and maintenance of such facilities for parking of vehicles as may from time to time be required in order to comply with any applicable ordinance with respect thereto.

4. **Maintenance and Inspection.** The Mortgagor will keep and maintain all buildings, structures and improvements now located or hereafter constructed on the Mortgaged Property in good repair, working order and condition, except, with the approval of the Mortgagee, for any such property reasonably determined by Mortgagor to be obsolete, irreparable or not necessary for Mortgagor's business and the Mortgagor will permit the Mortgagee and any persons authorized by the Mortgagee to enter and inspect the Mortgaged Property at all reasonable times.

5. **Waste, Unlawful Use, etc.** The Mortgagor will not commit or suffer any strip or waste, or unlawful, improper or offensive use of the Mortgaged Property, or any act or negligence whereby such property or any interest therein shall become liable to seizure or attachment or mesne or final process of law or whereby the lien provided hereby shall be impaired.

6. **Sale, Transfer, Sublease, etc.** The Mortgagor will not sell (including by agreement of sale), convey, assign, transfer or sublease the Mortgaged Property or any interest therein, except for subleases of portions of the Mortgaged Property to tenants in the ordinary course of the Mortgagor's business, without first obtaining the prior written consent of the Mortgagee. If requested by the Mortgagee, the Mortgagor will furnish to the Mortgagee promptly upon execution thereof copies of all subleases executed by the Mortgagor as sublessor covering any portion or portions of the Mortgaged Property.

7. **Compliance with and Preservation of Lease.**

(a) The Mortgagor will: (i) pay the rent reserved by the Lease as the same becomes due and payable; (ii) promptly perform and observe all of the covenants, conditions and agreements required to be performed and observed by the lessee under the Lease, and do all things necessary to preserve and keep unimpaired its rights thereunder; (iii) promptly notify the Mortgagee in writing of any default by the Mortgagor in the performance or observance of any of the covenants, conditions and agreements on the part of the lessee to be performed or observed under the Lease or of the occurrence of any event which, regardless of the lapse of time, would constitute a default thereunder; (iv) promptly notify the Mortgagee in writing of the giving of any notice by the lessor under the Lease of the default of the lessee thereunder in the performance or observance of any of the covenants, conditions and agreements on the part of the lessee to be performed or observed under the Lease and promptly cause a copy of each such notice given by the lessor to the lessee to be delivered to the Mortgagee; (v) promptly notify the Mortgagee in writing of the commencement of a proceeding under the federal bankruptcy laws by or against the Mortgagor or the lessor under the Lease; (vi) if any of the indebtedness secured hereby remains unpaid at the time when notice may be given by the lessee under the Lease of the exercise of any right to renew or extend the term

of the same, promptly give notice to the lessor under the Lease of the exercise of such right of extension or renewal; (vii) in case any proceeds of insurance upon the Mortgaged Property or any part thereof are deposited with any person other than the Mortgagee pursuant to the requirements of the Lease, promptly notify the Mortgagee in writing of the name and address of the person with whom such proceeds have been deposited and the amount so deposited; (viii) promptly after the execution and delivery of this Mortgage, notify the lessor under the Lease in writing of the execution and delivery hereof and of the name and address of the Mortgagee and deliver a copy of this Mortgage to the lessor; and (ix) promptly notify the Mortgagee in writing of any request made by either party to the Lease to the other party thereto for arbitration or appraisal proceedings pursuant to the Lease, and of the institution of any arbitration or appraisal proceedings and promptly deliver to the Mortgagee a copy of the determination of the arbitrators or appraisers in each such proceeding.

(b) The Mortgagor will not surrender the Lease or the Mortgagor's leasehold estate and interest therein, nor terminate or cancel the Lease, and will not, without the prior written consent of the Mortgagee, modify, change, supplement, alter or amend the Lease, either orally or in writing, and as further security for the repayment of the indebtedness secured hereby and for the performance of the covenants, conditions and agreements contained in this Mortgage and in the Lease, the Mortgagor hereby assigns to the Mortgagee all of its rights, privileges and prerogatives as lessee under the Lease to terminate, cancel, modify, change, supplement, alter or amend the Lease and any such termination, cancellation, modification, change, supplement, alteration or amendment of the Lease, without the prior written consent thereto by the Mortgagee, which shall not be unreasonably withheld, shall be void and of no force and effect. Without limiting the generality of the foregoing, the Mortgagor will not reject the Lease pursuant to 11 U.S.C. § 365(a), as amended, or any successor law, or allow the Lease to be deemed rejected by inaction and lapse of time, and will not elect to treat the Lease as terminated by the lessor's rejection of the Lease pursuant to 11 U.S.C. § 365(h)(1), as amended, or any successor law, and as further security for the repayment of the indebtedness secured hereby and for the performance of the covenants, conditions and agreements contained in this Mortgage and in the Lease, the Mortgagor hereby assigns to the Mortgagee all of the rights, privileges and prerogatives of the Mortgagor and the Mortgagor's bankruptcy trustee to deal with the Lease, which rights may arise as a result of the commencement of a proceeding under the federal bankruptcy laws by or against the Mortgagor or the lessor under the Lease, and any exercise of such rights, privileges or prerogatives by the Mortgagor or the Mortgagor's bankruptcy trustee without the prior written consent thereto by the Mortgagee shall be void and of no force and effect. As further security for the Mortgagee, the Mortgagor hereby agrees to deposit with the Mortgagee a duplicate original of the Lease and all supplements thereto and amendments thereof, to be retained by the Mortgagee until the indebtedness secured hereby is fully paid. So long as there is no breach of or default under any of the covenants, conditions or agreements contained in this Mortgage to be performed by the Mortgagor, or in the performance by the Mortgagor of any of the covenants, conditions and agreements in the Lease to be performed by the lessee thereunder, the Mortgagee shall have no right to terminate, cancel, modify, change, supplement, alter or amend the Lease. No release or forbearance of any of the Mortgagor's obligations as lessee under the Lease, whether pursuant to the Lease or otherwise, shall release the Mortgagor from any of its obligations under this Mortgage, including, but not limited to, the Mortgagor's obligations with respect to the payment of rent as provided for in the Lease and the observance and performance of all of the covenants, conditions and agreements contained in the Lease to be observed and performed by the lessee thereunder. Unless the Mortgagee shall otherwise

expressly consent in writing, the fee title to the Premises demised by the Lease and the leasehold estate thereunder shall not merge, but shall always remain separate and distinct, notwithstanding the union of such estates either in the Mortgage or in a third party by purchase or otherwise.

8. Restoration of Improvements. The Mortgagor will promptly restore, replace, rebuild or reinstall any part of the buildings, structures, improvements, and Equipment now or hereafter constructed, placed or installed on the Mortgaged Property, which may be damaged or destroyed by any casualty whatsoever, except, with the approval of the Mortgagee, any such property reasonably determined by Mortgagor to be obsolete, irreparable or not necessary for Mortgagor's business.

9. Liens; Junior Mortgages. The Mortgagor will not create, suffer to be created or permit to remain upon the Mortgaged Property or any part thereof, or the income therefrom, any junior or subordinate mortgage or any mechanic's, materialmen's, laborers', tax, statutory or other lien or charge, except the Encumbrances, and liens for taxes and assessments not yet payable or payable without penalty so long as payable; provided that nothing contained in this paragraph shall be deemed to require the Mortgagor to pay or cause to be paid, any tax, assessment or charge, or to satisfy any involuntary lien, so long as the Mortgagor in good faith by appropriate action diligently pursued shall contest, or cause to be contested, the validity thereof (provided the security afforded by this Mortgage shall not thereby be subjected to any sale, forfeiture or loss, or reasonable probability thereof).

10. No Impairment of Value of Mortgaged Property. No building, improvements, Equipment, or other property now or hereafter covered by the lien of this Mortgage shall be removed, demolished or altered in such manner as to diminish materially the value of the Mortgaged Property, without the prior written consent of the Mortgagee. The Mortgagor shall not initiate, join in or consent to any change in any private restrictive covenant, land use classification, zoning ordinance or other public or private restrictions limiting or defining the use which may be made of the Mortgaged Property or any part thereof.

11. Insurance. (a) The Mortgagor shall, during the term of this Mortgage, at its sole cost and expense and for the mutual benefit of the Mortgagor and the Mortgagee:

(i) keep any structures, buildings and other improvements now located or hereafter constructed on the Mortgaged Property and all Equipment and the interests and liabilities incident to the ownership thereof, insured against loss, destruction and damage by fire and all causes of loss by a commercial property insurance policy or policies written on the Insurance Service Office (commonly referred to as "ISO") "Special Form" used in the State of Hawaii or its equivalent, with an amount of coverage equal to 100% of the replacement cost of such structures, buildings and improvements, and including the following endorsements: (1) replacement cost coverage, (2) agreed amount, and (3) building ordinance coverage insuring against contingent liability from the operation of federal, state or county laws, statutes, ordinances or regulations concerning the buildings, structures or improvements on or about the Mortgaged Property, demolition of such buildings, structures or improvements and increased cost of construction of such buildings, structures or improvements. Additionally, the Mortgagor shall procure a difference-in-conditions policy to include flood, earthquake, backup of sewers, broad collapse coverage, and



building ordinance coverage with a limit of liability determined to be prudent by the Mortgagee. If the Mortgaged Property is located in an identified flood hazard area as now or hereafter designated by the United States Department of Housing and Urban Development, the Mortgagor shall also procure flood insurance required under the provisions of the Flood Disaster Protection Act;

(ii) if the Loan proceeds will be used to pay all or a portion of the cost of constructing improvements on the Land, the Mortgagor shall also effect and maintain a builder's risk policy, completed value form, with an amount of coverage equal to 100% of the estimated replacement cost of the improvements upon completion of construction. Such policy shall be written on (or provide coverage equal to the coverage provided by) an ALS 1972 policy (including earthquake and flood coverage), or its equivalent. If the Mortgagee so requires, the Mortgagor shall also effect and maintain, during the course of construction of the improvements, business income coverage in such amount and with such endorsements as the mortgagee may require; and

(iii) effect and maintain, to the extent reasonably available, commercial general liability insurance (occurrence form), including coverage for premises/operations, independent contractors, contractual liability, personal injury, employees as additional insureds, broad form property damage, with combined single limits of liability for bodily injury and property damage of at least \$1,000,000 per occurrence and \$2,000,000 general aggregate or such higher limits as the Mortgagee may from time to time require.

(b) All insurance required under the preceding subparagraphs shall be kept in such manner, form and amount as shall be approved by the Mortgagee, and the Mortgagor shall deposit a copy of the policy or policies therefor with the Mortgagee. In the event of foreclosure or sale of the Mortgaged Property, all interest of the Mortgagor in such insurance and the policies therefor and the monies payable thereunder shall pass to the purchaser or assignee of such property. All insurance required under the preceding subparagraphs (a)(i), (a)(ii) and (a)(iii) shall be effected under valid and enforceable policies issued by insurance companies authorized to do business in the State of Hawaii and having a rating by Best's Insurance Reports of Class A:VI or better. All such policies or other contracts for such insurance issued by the respective insurers shall, to the extent obtainable, be without contribution and contain an endorsement that the policy or other contract shall not be cancelled or materially changed without at least thirty (30) days' prior written notice to the Mortgagee.

Subject to any rights granted to the Mortgagor by law if the Mortgaged Property is residential property or to the extent required by the Lease, to use insurance proceeds for rebuilding, repairing or otherwise reinstating damaged or destroyed buildings, all losses and monies payable under the insurance required under the preceding subparagraphs (a)(i) and (a)(ii) shall be payable to the Mortgagee pursuant to a standard mortgage clause and lender's loss payable clause and shall be applied by the Mortgagee, at its option, either to rebuilding or repair of the loss, destruction or damage, or in the reduction of any indebtedness hereby secured. Any other insurance procured on such structures or improvements shall be payable as directed by and shall be claimable by the Mortgagee.

(c) The Mortgagee shall not be responsible for such insurance or for the collection of any insurance proceeds, or for the insolvency of any insurer or insurance underwriter.

(d) All such policies or other contracts for such insurance shall provide that the insurance shall not be invalidated as to the interest of the Mortgagee by any act or neglect of any person owning the property insured, or by any foreclosure or other proceedings, or notice of sale, or by any change in the title or ownership of the insured properties, or by occupation of any insured structures for purposes more hazardous than permitted by such policy or contract.

(e) Upon the execution of this Mortgage and thereafter not less than ten (10) days prior to the expiration date of the expiring policies or contracts, the originals or certified copies of all policies or contracts for insurance (or certificates therefor) of the character described in subparagraph (a) above shall be deposited with the Mortgagee.

(f) In the event of loss or physical damage to the Mortgaged Property, the Mortgagor shall give immediate notice thereof to the Mortgagee, and the Mortgagee may make proof of loss if the same is not made promptly by the Mortgagor.

(g) All insurance coverage required under this Mortgage shall be subject to availability with responsible insurance companies authorized to do business in the State of Hawaii. Where such coverage is not (or is no longer) available, the Mortgagor shall purchase and maintain such other insurance coverage as is acceptable to the Mortgagee.

(h) If the Mortgagor fails to maintain insurance coverage as described above, the Mortgagee may, at the Mortgagee's option, obtain insurance coverage to protect the Mortgagee's rights in the Mortgaged Property as described in this Mortgage.

12. Condemnation. If the Mortgaged Property or any part thereof shall be condemned, the Mortgagee may appear and defend any such suit and is hereby irrevocably authorized, subject to the rights of the lessor under the Lease, to collect all of the proceeds and apply the same upon any obligation secured hereby. All costs, expenses and attorneys' fees paid or incurred by the Mortgagee in the course of such proceedings shall constitute an advance hereunder.

Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Mortgaged Property by any public or quasi-public authority or corporation, the Mortgagor will continue to pay interest on the entire principal sums hereby secured until an award or payment from such authority or corporation shall have been actually received by the Mortgagee, and any reduction in the principal sum resulting from the application by the Mortgagee of such award or payment as hereinafter set forth shall be deemed to take effect only on the date of such receipt. Subject to the rights of the lessor under the Lease to receive or direct the disposition of condemnation proceeds, any such award or payment shall be applied in such proportions and priority as the Mortgagee, in the Mortgagee's sole discretion, may elect, to the payment of principal and interest on the Note, whether or not then due and payable, or any sums secured by this Mortgage, or to the payment to the Mortgagor, on such terms as the Mortgagee may specify, to be used for the sole purpose of altering, restoring or rebuilding any part of the Mortgaged Property which may have been altered, damaged or destroyed as a result of any such taking, alteration of grade or other injury to the Mortgaged Property. If, prior to the receipt by the

Mortgagee of such award or payment, the Mortgaged Property shall have been sold on foreclosure of this Mortgage, the Mortgagee shall have the right to receive such award or payment to the extent of the mortgage debt remaining unsatisfied after such sale of the Mortgaged Property, with legal interest thereon and reasonable attorneys' fees, costs and disbursements incurred by the Mortgagee in connection with the collection of such award or payment. Should all or any part of the Mortgaged Property be taken by eminent domain, the Mortgagor hereby assigns to the Mortgagee, and forthwith upon payment thereof will cause to be deposited with the Mortgagee, the award for any Mortgaged Property so taken, excluding, however, any portion of any award to which the lessor under the Lease may be entitled.

13. Notice of Deposit of Insurance or Condemnation Proceeds. The Mortgagor will, in case any proceeds of insurance upon the Mortgaged Property or any part thereof, or the proceeds of any award for the taking in eminent domain of the Mortgaged Property or any part thereof, are deposited with any person other than the Mortgagee, promptly notify the Mortgagee in writing of the name and address of the person with whom such proceeds have been deposited and the amount so deposited.

14. Assignment of Rentals. The Mortgagor hereby absolutely assigns to the Mortgagee all rents, revenues, rights and benefits accruing to the Mortgagor under all present and future leases and subleases of the Mortgaged Property or any part thereof (including, without limitation, any leases or subleases, if any, which may be described in the attached Exhibit A), with the right and authority to receive and apply the same to the Note or other indebtedness secured hereby, after default in the conditions thereof, anything to the contrary herein notwithstanding. The Mortgagee is further authorized, at its option, to notify the lessee or sublessee of such assignment, to execute and deliver binding receipts for any payments made under the terms of any such leases or subleases, and to demand, sue for and recover any such payments when due. The Mortgagor shall perform every obligation of the lessor or sublessor and shall enforce every material obligation of the lessee or sublessee in every such lease or sublease, and shall not, without the prior written consent of the Mortgagee, modify, alter, waive or cancel any lease or sublease or any part thereof, nor anticipate for more than one month any rents that may be collectible under such lease or sublease, and shall not further assign any such lease or sublease or any such rents. This assignment shall terminate and become null and void upon release of this Mortgage. Immediately upon the Mortgagee's delivering to the Mortgagor, or serving upon the Mortgagor, written notice of any alleged default, the Mortgagee may at any time, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured hereby, enter upon and take possession of the Mortgaged Property or any part thereof in its own name, sue for or otherwise collect such rents, revenues, rights and benefits, including those past due and unpaid, and apply the same (less costs and expenses of operation and collection, including brokers' fees and attorneys' fees) upon any indebtedness secured hereby, and in such order as the Mortgagee may determine. Upon the delivery or service of such notice of default, the Mortgagee shall have the absolute right to receive and collect all such rents, revenues, rights and benefits whether or not it takes physical possession as hereinabove provided; and the act of delivery or service of such notice of default shall be deemed to constitute the taking of possession by the Mortgagee; PROVIDED, that such possession by the Mortgagee shall not impose upon the Mortgagee any duties or obligations as lessor or sublessor under such leases and subleases or otherwise impose upon the Mortgagee any duties or obligations associated with the possession of property. The Mortgagor agrees to surrender physical possession of the Mortgaged Property upon written demand when the

Mortgagee becomes entitled thereto by reason of the default of the Mortgagor as hereinabove provided. The entering upon and taking possession of the Mortgaged Property, the collection of such rents, revenues, rights and benefits, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice, and shall be without prejudice to any other rights of the Mortgagee herein contained. So long as no Event of Default shall have occurred, the Mortgagor shall have the privilege, under a license hereby granted by the Mortgagee to the Mortgagor, to collect when due, but not more than one (1) month in advance, all rents, issues and profits from the Mortgaged Property and to retain, use and enjoy the same. Upon request of the Mortgagee, the Mortgagor will duly execute, acknowledge and deliver to the Mortgagee any instrument or instruments, in form satisfactory to the Mortgagee, confirming the assignment to the Mortgagee of any specific leases or subleases.

15. Application of Payments. The Mortgagee shall have the right and is hereby expressly authorized to apply any payments received and any rents, issues and profits collected to the payment of any indebtedness of the Mortgagor to the Mortgagee hereby secured in any order which the Mortgagee may determine, and any such application shall in all respects be binding upon the Mortgagor.

16. Mortgagee's Right of Set-Off. Upon the happening of any event entitling the Mortgagee to foreclose this Mortgage, or if the Mortgagee shall be served with garnishee process in which the Mortgagor shall be named as defendant, whether or not the Mortgagor shall be in default hereunder at the time, the Mortgagee may, but shall not be required to, set off any indebtedness owing by the Mortgagee to the Mortgagor against any indebtedness secured hereby, without first resorting to the Mortgaged Property and without prejudice to any other rights or remedies of the Mortgagee or the lien of the Mortgagee on the Mortgaged Property.

17. Possession by Mortgagor After Sale. In the event of a sale of the Mortgaged Property, or any part or parts thereof, under and by virtue of the provisions of this Mortgage, the purchaser or purchasers thereof shall have immediate and peaceable possession of the same, and if the Mortgagor shall remain in possession after the effective date of such sale, such possession shall be construed as a tenancy at sufferance only, giving unto the purchaser all remedies, by way of summary possession or otherwise, conferred by law in such case.

18. Acknowledgment of Mortgage Debt. Within five (5) days after request by the Mortgagee in writing, the Mortgagor will furnish to the Mortgagee or to any proposed assignee of this Mortgage a written statement, duly acknowledged, of the amount due on this Mortgage and whether any offsets, counterclaims or defenses exist against the mortgaged debt.

19. Further Instruments. The Mortgagor, upon reasonable request of the Mortgagee, will execute and deliver such further instruments and do such further acts as may be necessary or proper to carry out more effectively the purpose of this Mortgage and to subject the Mortgaged Property to the lien hereof, and any renewals, additions, substitutions, replacements or betterments thereto.

20. Right of Mortgagee to Prevent or Remedy Default. If the Mortgagor shall fail to observe or perform any of the terms, covenants, and conditions required to be observed and performed by the Mortgagor under this Mortgage, unless the Mortgagor shall be engaged in good faith by appropriate action diligently pursued in contesting or causing to be contested the existence

of such default and the security afforded by this Mortgage shall not thereby be subjected to any sale, forfeiture or loss, or reasonable probability thereof, the Mortgagee may (but shall not be obligated to): (i) take any action the Mortgagee deems necessary or desirable to prevent or remedy any such default by the Mortgagor, or to otherwise protect the security of this Mortgage; and (ii) enter in and upon the Mortgaged Property or any part thereof to such extent and as often as the Mortgagee, in its sole discretion, deems necessary or desirable in order to prevent or to remedy any such default by the Mortgagor or otherwise to protect the security of this Mortgage, and the Mortgagee may pay and advance for the account of the Mortgagor such sums of money as the Mortgagee, in its sole discretion, deems necessary for any such purpose.

21. Right of Mortgagee to Participate in Action Affecting Security. The Mortgagee, may appear in and participate in any action or proceeding at law or in equity purporting to affect the security of this Mortgage, and in such event (except where the purported defect affecting the security hereof arises or results from any act or omission of the Mortgagee), the Mortgagee shall be allowed and paid, and the Mortgagor hereby agrees to pay, all of the Mortgagee's costs, charges and expenses, including cost of evidence of title and reasonable attorneys' fees, incurred in such action or proceeding in which the Mortgagee may appear.

22. Right of Mortgagee to Extend Time of Payment, Substitute, Release Security, etc. Without affecting the liability of any person, including the Mortgagor, for the payment of any indebtedness secured hereby, or the lien or security interest of this Mortgage on the Mortgaged Property (or the remainder thereof), for the full amount of any indebtedness unpaid, the Mortgagee may from time to time, without notice and without affecting or impairing any of its rights under this Mortgage: (a) release any person liable for the payment of any of the indebtedness; (b) extend the time or otherwise alter the terms of payment of any of the indebtedness or accept a renewal note or notes to evidence such an extension or alteration; (c) accept additional security therefor of any kind, including (but not limited to) deeds of trust, mortgages and security agreements; (d) alter, substitute or release any property securing the indebtedness; (e) resort for the payment of the indebtedness secured hereby to any securities therefor in such order and manner as it may see fit; (f) join in granting any easement or creating any restriction thereon; and (g) join in any extension or subordination or other agreement affecting this Mortgage or the lien or charge thereof.

23. Mortgagee's Expenses for Protection of Security. All advances, costs, expenses and attorneys' fees which the Mortgagee may make, pay or incur under any provision of this Mortgage for the protection of the security of the Mortgagee, or any of the rights of the Mortgagee in connection with the Mortgaged Property, or in foreclosure proceedings commenced and subsequently abandoned, or in any dispute or litigation in which the Mortgagee or the holder of the Note may become involved by reason of or arising out of this Mortgage or the other Loan Documents, shall be paid by the Mortgagor to the Mortgagee, upon demand, and shall bear interest until paid at the rate specified in the Note to be paid in the event of a default, all of which obligations shall be additional charges upon the Mortgaged Property and be equally secured hereby and shall be a lien on the Mortgaged Property prior to any rights or claims upon the Mortgaged Property subordinate to the lien of this Mortgage.

24. Partial Releases. The Mortgagee may release, for such consideration or none, as it may require, any portion of the Mortgaged Property without, as to the remainder of the Mortgaged

Property, in any way impairing or affecting the lien, security interest and priorities herein provided for the Mortgagee compared to any subordinate lien holder or secured party.

25. [Reserved.]

26. Loss, Destruction, etc. of the Note. The Mortgagor will, in the event the Note shall be mutilated, destroyed, lost or stolen, deliver to the Mortgagee, in substitution therefor, a new Note containing the same terms and conditions as the old Note with a notation thereon of the unpaid principal and accrued unpaid interest. The Mortgagor shall be furnished with satisfactory evidence of the mutilation, destruction, loss or theft of the Note and also such security or indemnity as may be reasonably requested by the Mortgagor; PROVIDED, HOWEVER, that if the original Mortgagee named herein is then the Mortgagee under this Mortgage, an unqualified indemnity from the original Mortgagee named herein shall be deemed to be satisfactory security for indemnification.

27. Governmental Approvals. The Mortgagor shall at all times during the continuance of this Mortgage maintain in full force and effect all governmental and municipal approvals and permits which are required to comply with all environmental, ecological and other governmental requirements relating to the Mortgaged Property or to the occupancy thereof.

28. Mortgage Fees; Documentary Stamps. If at any time the State of Hawaii or the United States of America shall impose any fee on this Mortgage or any amendments hereto or the indebtedness secured hereby, including, without limitation, any fee on the making or recordation of this Mortgage or any amendments hereto, or require internal revenue stamps to be affixed to the Note or this Mortgage, the Mortgagor will pay for the same with any interest or penalties imposed in connection therewith.

29. Tax on Mortgage or Debt. In the event of the adoption or amendment of any law of the State of Hawaii after the date of this instrument, other than a law providing for the imposition of a tax on, according to, or measured by income, which shall in any way change the manner of taxation or of the collection of taxes on mortgages or debts secured by mortgages, to the end that, directly or indirectly, the Mortgagee shall be required to pay on account of this Mortgage or the indebtedness secured hereby, any tax other than taxes of the kind or character now imposed thereon by the laws of the State of Hawaii, and other than a tax on, according to or measured by income, the holder of this Mortgage, at any time after such adoption or amendment of such law, may give written notice to the Mortgagor that such holder elects to have the indebtedness secured by this Mortgage become due and payable. If such notice is given, the said indebtedness shall become due, payable and collectible at the expiration of thirty (30) days; PROVIDED, HOWEVER, that such requirement of payment shall be ineffective if the Mortgagor is permitted by law to pay the whole of such tax in addition to all other payments required hereunder, without any penalty accruing to the holder of the Note, and if the Mortgagor in fact pays such tax prior to the date upon which payment is required by such notice.

30. Hazardous Materials. The Mortgagor shall keep and maintain the Mortgaged Property, including, without limitation, the groundwater on or under the Mortgaged Property, in compliance with, and shall not cause or permit the Mortgaged Property to be in violation of, any Hazardous Materials Laws. The Mortgagor shall not use, generate, manufacture, treat, handle, refine, produce, process, store, discharge, release, dispose of or allow to exist on, under or above the Mortgaged

Property, any Hazardous Materials. The Mortgagor shall immediately advise the Mortgagee in writing of (a) any and all enforcement, clean up, removal, mitigation, or other governmental or regulatory action instituted, contemplated or threatened pursuant to any Hazardous Materials Laws affecting the Mortgaged Property, (b) all claims made or threatened by any third party against Mortgagor or the Mortgaged Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (a) and (b) above are hereinafter referred to as "Hazardous Materials Claims") and (c) the Mortgagor's discovery of any occurrence or condition on the Mortgaged Property or any real property adjoining or in the vicinity of the Mortgaged Property which could subject the Mortgagor or the Mortgaged Property to any restrictions on ownership, occupancy, transferability or use of the Mortgaged Property under any Hazardous Materials Laws. The Mortgagor shall indemnify the Mortgagee, its directors, officers, employees, agents, successors and assigns from and against, any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, manufacture, treatment, handling, refining, production, processing, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under or about the Mortgaged Property, including, without limitation: (i) all foreseeable and unforeseeable consequential damages; (ii) the costs of any required or necessary repair, clean up or detoxification of the Mortgaged Property, and the preparation and implementation of any closure, remedial or other required plans; and (iii) all reasonable costs and expenses incurred by the Mortgagee in connection with clauses (i) and (ii), including, without limitation, reasonable attorneys' fees. The indemnification provisions of this paragraph shall survive (a) the repayment of the note secured by this Mortgage, (b) any foreclosure of this Mortgage, and (c) any deed or assignment of the Mortgaged Property in lieu of foreclosure.

31. Special Covenants Regarding Forfeiture Laws. The Mortgagor hereby covenants that the Mortgagor will not do or allow to be done any act or thing on or in any way relating to the Mortgaged Property which violates or may result in the violation of any federal, state or other law for which forfeiture of assets is a potential penalty or liability (hereinafter called "Forfeiture Laws"). In the event that the Mortgagee has reasonable cause to believe that any portion of the Mortgaged Property or any other collateral securing the Loan might be or become subject to forfeiture under any Forfeiture Laws, the Mortgagee may, in its sole discretion, and in addition to its other remedies under this Mortgage and at law or in equity, refuse to make any further disbursements of Loan proceeds, of any kind whatsoever, until the Mortgagee no longer has any reasonable belief that any portion of the Mortgaged Property or any other collateral securing the Loan is subject to or may become subject to forfeiture under any Forfeiture Laws.

32. Business Loan Transaction. The advances made under the Loan evidenced by the Note are made for commercial purposes and the Loan is neither a consumer credit transaction nor a home business loan, as defined in Section 478-1, Hawaii Revised Statutes, as amended.

33. Variable Rate Note. The Note that this Mortgage secures is a variable rate note. The interest rate charged under the Note may change from time to time.

34. Financial Statements. During the entire term of the Loan the Mortgagor shall provide the Mortgagee with (a) such financial and supporting data as the Mortgagee may require, reflecting all material information concerning the financial status and operations of the Mortgaged Property,

and (b) annual financial statements of the Mortgagor in form and content satisfactory to the Mortgagee, as provided in the Loan Agreement.

### C. MISCELLANEOUS PROVISIONS.

1. No Waiver. Any failure by the Mortgagee to insist upon the strict performance by the Mortgagor of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof, and the Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the Mortgagor of any and all of such terms and provisions of this Mortgage to be performed by the Mortgagor.

2. Security Agreement and Financing Statement Under Uniform Commercial Code. This Mortgage shall constitute a security agreement and financing statement under the UCC, as enacted in Hawaii; and the Mortgagor, as debtor, hereby grants to the Mortgagee, as secured party, a security interest in any or all of the Mortgaged Property, including (but not limited to) the Equipment, in addition to a mortgage lien upon the same as part of the realty. The Mortgagor will assist in the preparation of and execute from time to time, alone or with the Mortgagee, and deliver, file and record any financing or continuation statements, mortgages or other instruments, and do such further acts as the Mortgagee may request to establish, maintain and perfect the security interests of the Mortgagee in the Mortgaged Property, including (but not limited to) the Equipment, and all renewals, additions, substitutions, improvements to the same and the proceeds thereof, and otherwise to protect the same against the rights and interests of third parties. The terms of this Mortgage shall be deemed commercially reasonable within the meaning of the UCC.

3. Definitions. The terms "advances," "costs" and "expenses" shall include, but shall not be limited to, reasonable attorneys' fees whenever incurred. The terms "indebtedness" and "obligations" shall mean and include, but shall not be limited to, all claims, demands, obligations and liabilities whatsoever, however arising, whether owing by the Mortgagor individually or as a partner, or jointly or in common with any others, and whether absolute or contingent, and whether owing by the Mortgagor as principal debtor or as accommodation maker or as indorser, liquidated or unliquidated, and whenever contracted, accrued or payable.

4. Paragraph Headings. The headings of paragraphs herein are inserted only for convenience and shall in no way define, describe or limit the scope or intent of any provisions of this Mortgage.

5. Applicable Laws. This Mortgage shall be governed by and shall be construed and interpreted under and pursuant to the laws of the State of Hawaii and all applicable federal laws. If any provision of this Mortgage is held to be invalid or unenforceable, such will not affect the validity or enforceability of the other provisions of this Mortgage.

6. Parties in Interest. As and when used herein, the term "Mortgagor" shall mean and include each Mortgagor above-named and each such Mortgagor's heirs, personal representatives, successors and assigns; the term "Mortgagee" shall mean and include the Mortgagee above-named and its successors and assigns; the use of the singular shall mean and include the plural and vice versa; and the use of any gender shall include all genders. If the Mortgagor consists of more than



one person or entity, all obligations and liability of the Mortgagor hereunder shall constitute the joint and several obligations and liability of each such person or entity.

7. Notices. All notices, demands or documents to be delivered under this Mortgage shall be given in writing and sent by registered or certified mail addressed to the parties at the addresses set forth on the first page of this Mortgage. Such addresses may be changed by addressee by serving notice as provided above. Service of such notice shall be deemed complete on the earlier to occur of the actual date of delivery or three (3) days after mailing.

8. Counterparts. This Mortgage may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatories to the original or the same counterparts. In making proof of this Mortgage, it shall not be necessary to produce or account for more than one such counterpart. For all purposes, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Mortgagor has executed these presents as of the date first above written.

MORTGAGOR: CYANOTECH CORPORATION, a Nevada corporation

By \_\_\_\_\_  
GERALD R. CYSEWSKI  
Its President

By \_\_\_\_\_  
RONALD P. SCOTT  
Its Secretary

STATE OF HAWAII

)

COUNTY OF HAWAII

) SS

)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me personally appeared GERALD R. CYSEWSKI and RONALD P. SCOTT, to me personally known, who, being by me duly sworn, did say that they are the President, and the Secretary, respectively, of CYANOTECH CORPORATION, a Nevada corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and said GERALD R. CYSEWSKI and RONALD P. SCOTT acknowledged said instrument to be the free act and deed of said corporation.

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Name:

Notary Public, State of Hawaii

My commission expires:

EXHIBIT A

UNRECORDED SUBLEASE NO. K-4

Sublessor: Natural Energy Laboratory of Hawaii, a body corporate and a public instrumentality of the State of Hawaii organized pursuant to Hawaii Revised Statutes, Chapter 227D

Sublessee: CYANOTECH CORPORATION, a Nevada corporation

Dated: December 29, 1995

Term: Thirty (30) years, commencing on January 1, 1996

The foregoing unrecorded Sublease No. K-4 was amended by the following:

UNRECORDED SUPPLEMENTAL AGREEMENT NO. 1 TO AMEND SUBLEASE K-4

Dated: November 21, 1996

The foregoing unrecorded Sublease No. K-4 and unrecorded Supplemental Agreement were set forth by the following:

SHORT FORM SUBLEASE NO. K-4

Effective As Of: December 29, 1995

Recorded: Document No. 2000-056138

THE REAL PROPERTY IN THE FOREGOING SUBLEASE AS AMENDED, BEING DESCRIBED AS FOLLOWS:

That certain parcel of land situate on the westerly side of Keahole Airport and the easterly side of the Roadway to the Natural Energy Laboratory at KALAOA 1st to 4th and OOMA 1st, North Kona, Island and County of Hawaii, State of Hawaii, being Parcel H-1 a portion of Parcel "A" (C.S.F. NO. 19968) all of Lease Parcel "G" and Parcel H-2 a portion of Lot 9 a portion of H.S.S. Plat 315-A (C.S.F. No. 19934), and being more particularly described as follows:

Beginning at the southwest corner of this leased parcel of land being along the easterly side of the main roadway to the Natural Energy Laboratory, the coordinates of said point of beginning referred to Government Survey Triangulation Station "AKAHIPUU" being 9,099.64 feet south and 29,930.02 feet west and running by azimuths measured clockwise from true South:

1. 213° 29' 15.0" 825.97 feet along leased Parcel "A" to a point;
2. 123° 29' 15.0" 249.34 feet along the remainder of Parcel "A" to a point;

Thence, along the remainder of the Natural Energy Laboratory Site, H.S.S. Plat 315-A (C.S.F.

No. 19934) for the following four (4) courses;

3. 184° 50' 25.0" 974.90 feet to a point;

Thence, along a curve to the right having a radius of 440.00 feet, the chord azimuth and distance being:

4. 205° 30' 12.5" 310.53 feet to a point;

5. 226° 10' 00.0" 527.04 feet to a point;

6. 274° 50' 25.0" 749.21 feet to a point;

7. 4° 50' 25.0" 3,501.37 feet along the westerly side of Keahole Airport (C.S.F. No. 19137) to a point;

Thence, along the remainder of Lot 9, along a curve to the right having a radius of 435.00 feet, the chord azimuth and distance being:

8. 30° 13' 39.5" 373.00 feet to a point;

9. 55° 36' 54.0" 72.78 feet along the remainder of Lot 9 to a point;

10. 145° 36' 54.0" 1726.08 feet along the easterly side of the main roadway to the Natural Energy Laboratory to a point;

11. 123° 29' 15.0" 86.79 feet along the easterly side of the main roadway to the Natural Energy Laboratory to the point of beginning and containing an area of 90.067 acres, more or less.

Saving and excepting therefrom the portion thereof lying seaward of the debris line.

TOGETHER WITH Easement "1-A" for roadway purposes.

TOGETHER ALSO WITH Easement "6" for utility purposes, said Easement "6" being more particularly described in that certain Short Form Sublease No. K-4 effective as of December 29, 1995, recorded in the Bureau of Conveyances, State of Hawaii, as Document No. 2000-056138.

SUBJECT, HOWEVER, TO the following:

1. Title to all mineral and metallic mines reserved to the State of Hawaii.
2. The property borders on the ocean and is subject to the provisions of Hawaii Revised Statute 205A. Sections 41 to 49 relative to shoreline setbacks and prohibitions on use, and to the regulations of the Land Use Commission and the County Planning Department.

3. EASEMENT "2-A" (Revised 2) for roadway purposes, as set forth in that certain Short Form Sublease No. K-4

Effective As Of: December 29, 1995  
Recorded: Document No. 2000-056138

4. EASEMENT "3" for electrical purposes, as set forth and being more particularly described in, that certain Short Form Sublease No. K-4

Effective As Of: December 29, 1995  
Recorded: Document No. 2000-056138

5. EASEMENT "5" for electrical purposes, as set forth and being more particularly described in, that certain Short Form Sublease No. K-4

Effective As Of: December 29, 1995  
Recorded: Document No. 2000-056138

6. UNRECORDED GENERAL LEASE NO. S-4717

Lessor: State of Hawaii, by its Board of Land and Natural Resources  
Lessee: NATURAL ENERGY LABORATORY OF HAWAII, a body corporate and public instrumentality of the State of Hawaii organized pursuant to Hawaii Revised Statutes, Chapter 227 (now Chapter 227D)  
Effective As Of: November 1, 1978  
Term: Sixty-five (65) years, commencing on November 1, 1978

The foregoing unrecorded General Lease No. S-4717 was set forth by the following:

SHORT FORM GENERAL LEASE NO. S-4717

Effective As Of: November 1, 1978  
Recorded: Document No. 2000-056137

7. The failure to comply with any of the terms, provisions, conditions and reservation of that certain Sublease No. K-4, more particularly described in Exhibit A herein.
8. Any unrecorded or unfiled subleases or rental agreements and any liens, charges or exceptions against any sublessees or tenants named therein.
9. Any lien, or right to a lien for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

10. REAL PROPERTY MORTGAGE; SECURITY AGREEMENT; ASSIGNMENT OF RENTS; AND FINANCING STATEMENT

Mortgagor: Cyanotech Corporation, a Nevada corporation  
Mortgagee: B & I LENDING, LLC, a Delaware limited liability company  
Dated: April 21, 2000  
Recorded: Document No. 2000-056139  
Principal Amount: \$3,500,000.00

CONSENT

Consent By: STATE OF HAWAII, by the Chairperson of the Board of Land and Natural Resources  
Dated: April 21, 2000  
Recorded: Document No. 2000-056140

LESSOR'S ESTOPPEL CERTIFICATE

Dated: April 21, 2000  
Recorded: Document No. 2000-056141

CONSENT

Consent By: THE NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY, State of Hawaii  
Dated: April 21, 2000  
Recorded: Document No. 2000-056142

11. UCC FINANCING STATEMENT

Recorded: April 26, 2000  
Document No. 2000-056 143  
Debtor: Cyanotech Corporation, a Nevada corporation  
Secured Party: B & I LENDING, LLC, a Delaware limited liability company

CONTINUATION OF UCC FINANCING STATEMENT

Recorded: March 21, 2005  
Document No. 2005-055329

12. UCC FINANCING STATEMENT

Recorded: April 26, 2000 Document No. 2000-056 144  
Debtor: Nutrex, Inc., a Hawaii corporation  
Secured Party: B & I LENDING, LLC, a Delaware limited liability company

CONTINUATION OF UCC FINANCING STATEMENT

Recorded: March 21, 2005  
Document No. 2005-055330

**END OF EXHIBIT A**